

DEPARTMENT OF WORKFORCE DEVELOPMENT
DIVISION OF EMPLOYMENT AND TRAINING
ADMINISTRATOR'S MEMO SERIES

ACTION 10-06
 NOTICE

ISSUE DATE: 5/07/2010
DISPOSAL DATE: Ongoing

*PROGRAM CATEGORIES:

AS FL ML TR
 CR IT RA WIA
 FM JC TC YA
 LM TA

To: Workforce Development Board Directors

From: Ron Danowski, Division Administrator
Division of Employment and Training



RE: Administrator's Memo on Workforce Investment Act (WIA) Customized Training Policies and Procedures

Purpose To provide the State policy and procedures for statewide implementation of WIA-funded customized training with the State waiver

Legislative/Regulatory References

WIA 1998 Public Law 105-220, section 101(8)
WIA 1998 Federal Rules and Regulations, sections 663.715, 663.720 and 663.730
November 13, 2009 Department of Labor Letter on Wisconsin's Waiver Requests
WIA Policy Update 09-05: Pre-Award Criteria – Business Relocation/Expansion (120 Day Rule)

Background

Customized training is designed to meet the specific training needs of an employer or group of employers through a training curriculum that is "customized" to a WIA participant's skill needs. Under the terms of a customized training contract, the employer must commit to employ, or continue to employ, the workers upon successful completion of training. The U.S. Department of Labor (DOL) has approved a sliding scale for the statutory employer match based on the State's waiver request. [The WIA provision that is waived is the employer 50% match of the cost of the participant's training]. Customized training may be developed for an employer who is

*PROGRAM CATEGORIES:

AS--Apprenticeship
Standards
CR--Civil Rights

FM--Financial Management
Requirements
FL--Foreign Labor Certification
IT--IT Systems
JC--Job Center

LM--Labor Market
Information
ML--Migrant Labor
RA--Refugee Assistance
TC--Tax Credit Programs
TA--Trade Assistance

TR--Transportation
WIA--Workforce
Investment Act
YA--Youth Apprenticeship

hiring new employees as well as those currently employed by the employer. This form of training is an exception to the requirement under WIA to establish an Individual Training Account for eligible individuals to finance training services.

Policy

The following guidelines are designed to assist staff in developing a customized training experience:

A. Selection of Participants for Customized Training

All participants, including those who may already be employed by the employer, must meet all WIA eligibility requirements, and receive both a core and an intensive service prior to the start of the customized training.

Customized training can be offered to incumbent workers under the following conditions:

1. The employed individual is not earning a self-sufficient wage as determined by the local Board; and
2. The training relates to the introduction of new technologies, new products or service procedures, upgrading to new jobs that require new skills, workplace literacy, or other purposes identified by the local Board.

B. Selection of Employers for Customized Training

Potentially eligible employers able to participate in customized training contracts include: private-for-profit businesses, private non-profit organizations, and public sector employers.

WDBs should ensure that customized training contracts are not written with employers who have failed to provide agreed upon employment to previous participants completing required training. WDBs may take into consideration an employer's past history with On-the-Job Training contracts, finances, layoffs, relocations, labor disputes, as well as the occupational and industry outlook, as a basis for assessing an employer's viability for customized training contracts.

C. Occupational Eligibility

Customized training is allowable for occupations which are consistent with the participant's capabilities, are in demand occupations which will lead to employment opportunities enabling the participant to become economically self-sufficient and which will contribute to the occupational development and upward mobility of the participant on a career pathway.

Occupations selected for customized training shall meet, at the time of completion or per company policy, the following:

1. Full time permanent positions (minimum of 32 hours per week);
2. All participants shall be provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work. This will include unemployment compensation where the employer is normally required to provide such coverage to its employees; and

3. The position provides the participant benefits per company policy which have a monetary value (i.e., insurance, paid leave, profit sharing) other than those required by law.

Occupations under which individuals may not participate in customized training include, but are not limited, to the following:

1. Occupations depending on commission as the primary income source.
2. Professional occupations for which the trainee already possesses a license (e.g., real estate agent, insurance agent, etc.).
3. Occupations dependent on tips or gratuities as the primary income source.
4. Occupations which provide for only temporary or intermittent employment.

D. Pre-Award Review

Prior to the development of a customized training contract, a pre-award review must be conducted to ensure that a business, or part of a business has not relocated from another location in the U.S., if the relocation results in any employee losing his or her job at the original location (see WIA Policy Update 09-05 for further information).

E. Customized Training Contract

Customized training contracts must specify:

1. Name and address of requesting organization, business, or agency
2. Contact official, title, and telephone number
3. Cost of the proposed training
 - Total cost of the training
 - Total WIA funds requested
 - Total employer contribution (described in detail)
4. Description of proposed training
 - Need for training, based upon the individual skill sets of trainees
 - Occupational demand for trained individuals
 - Type of training to be provided
 - Length of proposed training
 - Location of training site
 - Target group for training
 - Number of individuals to receive training
5. Training Plan
 - Objectives of the training
 - Specific skills to be learned
 - Method of instruction
 - Measurement of objectives and skill attainment of trainees
6. Qualifications of training staff

7. Employer involvement and commitment
 - Curriculum design meeting needs of employer
 - Commitment of the employer to employ participants who successfully complete the training
8. Budget
 - Narrative explanation of how the funds will be utilized
 - An itemized budget
9. Special health or safety equipment or precautions required (including those costs associated with accommodations, e.g., new software for such things as speech recognition, modified workstations, and workplace supports such as job coaching), if any.
10. Special tools or uniforms required, if any, and whether or not the employer will supply them.
11. Modification conditions and requirements.
12. Contract termination conditions.

Customized training contracts are to contain appropriate assurances and certifications including:

1. Compensation for the participant at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Such rates may not be less than the higher of the federal or State minimum wage.
2. Provision of benefits and working conditions at the same level and extent as other employees of similar longevity and doing the same type of work. This will include unemployment compensation coverage where the employer is normally required to provide such coverage to employees. The employer must also secure worker's compensation or other insurance coverage for work-related injury of trainees.
3. Maintenance, retention, and access to records by the WDB, State, and Department of Labor personnel to support the training activity and associated reimbursements, i.e., time and attendance records, payroll records, invoice and reimbursement documents, and other information necessary to respond to monitoring reviews or audits (documentation of extraordinary costs is not required).
4. Prohibition on the use or proposed use of WIA funds as an inducement to a business or part of a business to relocate if the relocation results in any employee losing his/her job at the original location.
5. Prohibition on the use or proposed use of WIA training funds on any business or part of a business that has relocated from any location in the U.S., until the company has operated at the new location for 120 days, if the relocation resulted in any employee losing his/her job at the previous location.
6. No customized training contract shall impair: (a) existing contracts for services; or (b) existing collective bargaining agreements, unless the employer and labor organization concur in writing with respect to any elements of the proposed activities which affect such agreement.

7. Assurance that adequate supervision will be provided at all time while the trainee is participating in the customized training.
8. Health and safety standards under Federal and State law equally applicable to customized training participants.
9. The employer must comply with civil rights law and regulations, including non-discrimination.
10. Prohibition on the use of WIA funds to directly or indirectly assist, promote, or deter union organizing or engaging in political activities (including lobbying) during training hours.
11. No officer, employee or other agent of the employer shall recommend hiring, decide hiring, establish salary/wage rate, or provide preferential supervisory treatment with respect to a trainee who is a member of the officer's, employee's or agent's immediate family.
13. Prohibition from being employed in the construction, operation or maintenance of any facility that is used for religious instruction or worship.
14. Prohibition on the use of funds for construction except for provision of reasonable accessibility and accommodation.

F. Determining Length of Training

Customized training must be limited to the period of time required for the participants to become proficient in the occupation for which the training is being provided. The amount of training hours needs to take into account the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, the participant's individual employability plan and job accommodations that may be required. The contracted training hours cannot include those types of training normally provided by the employer for new employees such as orientation to the job/business, safety procedures, etc. Training guides, such as provided in ONET, the SVP and others, can be used to help determine the length of training.

G. Developing the Training Plan

The customized training contract must include a training plan. The training plan, including skills to be learned and the time necessary to learn each skill must be sufficiently specific to permit verification that training was provided in accordance with the contract. The following guidelines apply to the development of a training plan:

1. Activities (the work statement) must be described clearly to show that the employer is obligated to conduct training.
2. Skills to be learned (measurable) should be separately listed with training times estimated for each.
3. Training times must be reasonable.
4. Training times must be geared to both the complexity of the job and the abilities of the trainee.
5. The training outline must identify the job title of the person(s) responsible for the training.
6. The training outline must include measurement and evaluation procedures.
7. The trainee, supervisor, and/or trainer should be knowledgeable about its contents.

H. Employer Match Requirement

This sliding scale waives the WIA provision that requires the employer to pay for not less than 50 percent of the cost of the training. DOL approved the State's waiver request, and authorized the following employer contribution through a sliding scale based on the size of the business:

- No less than 10% match for employers with 50 or fewer employees
- No less than 25% match for employers with 51-250 employees
- For employers with more than 250 employees, the current statutory requirement (50 percent contribution) continues to apply

The employee count is to include full-time and part-time workers, and workers placed through a private placement agency. This count is based upon the employer's total number of employees, not the number of employees to be trained. The count is to be on a company-wide basis for all locations within the State of Wisconsin; and the involved adjoining state when customized training is being offered to Wisconsin residents who work for employers in an adjoining state.

The employer may contribute in-kind costs to replace their cash contribution if the in-kind costs are above and beyond what the employer normally spends on training and operations. These costs must be specifically related to the customized training. Examples are:

1. Training rooms – If the employer had to rent a “special” room in which to specifically conduct the customized training versus one that is routinely available and requires no additional payment by the employer. That “special” room could count as in-kind costs because it is an extraordinary expense to the employer and is directly associated to the customized training.
2. Training materials – If these materials are developed specifically for the customized training and are not in the employer's possession for use after the training occurs, they may count as an in-kind contribution by the employer.
3. Training equipment – If additional equipment is purchased for the customized training, it cannot count as in-kind since the equipment would be a part of the employer's assets/inventory.

These in-kind contributions should be documented in the files just as cash contributions are for future audit purposes.

When determining the funding source for customized training, the WDB must use the appropriate program funds for the appropriate WIA-eligible population. The WDB may provide customized training to low-income and eligible employed adults with WIA Adult funds, and may provide customized training to dislocated workers with WIA Dislocated Worker funds. Customized training provided with statewide funds must serve WIA eligible individuals.

Monitoring

The WDB must have policies and procedures in place to ensure that:

1. The training plan has measurable indicators of performance.

2. Evaluation of those indicators will occur to determine if skills identified in the training plan have been acquired.
3. Onsite visit(s) and other monitoring are conducted during the course of the training to determine compliance with WIA requirements, progress toward completion of the training plan and to resolve issues for the employer and/or participants.

Performance

In addition to the WDB annual performance data reporting, the State must address the impact the customized training waiver had on the State's performance in the WIA Annual Report. WDBs will be asked to explain how the sliding scale for customized training contracts has changed the activities of the local area, and how activities carried out under the waiver have directly or indirectly affected the local area performance outcomes.

Specific to the customized training waiver, the WDB will need to provide an annual narrative to:

1. Identify what sector partnerships were involved in training activities as part of the Industry Sector Partnership Initiative as well as the employer size;
2. Discuss whether the sliding scale was effective for increased employer participation, and if the training helped the employer maintain a competitive advantage;
3. Describe the factors that contributed to the success of these programs; and
4. Identify how many participants were hired as a result of the sliding scale waiver training.

Automated System Support for Employment and Training (ASSET) Reporting

The WDB is required to report performance outcomes in the Workforce Investment Act Standardized Record Data System for all individuals served under the customized training waiver, and the State must report annually to DOL on this waiver. Therefore, all participants must be recorded in ASSET. The customized training service can be found in the Manage Services Menu. For adults and dislocated workers, the service is a Training Service. Also, an edit will be added in ASSET to prevent associating a customized training service with Individual Training Account services.

Action Required

The WDB must:

1. Adjust their local policy to allow for the increased flexibility of the State waiver, and be consistent with the other elements of this policy;
2. Train or communicate to staff and contractors on the new sliding scale, and explain how they intend to implement it locally;
3. Establish or refine systems to evaluate the effect of the State waiver;
4. Revise any marketing to employers; and
5. Submit results of the new service strategy with the State waiver no later than August 15, 2010.

Questions and/or Technical Assistance and Training

If you need additional information regarding this policy, please contact the Local Program Liaison assigned to your area.